

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

NEWCOMB CHILD DEVELOPMENT
CENTER and ANDREA CANNON
Respondents

Case No.: I-00-40912

FINAL ORDER

I. Introduction

On August 14, 2001, the Government served a Notice of Infraction upon Respondents Newcomb Child Development Center (“Newcomb”) and Andrea Cannon alleging that they violated 29 DCMR 330.8, which provides that required exits in child development centers must be equipped with hardware that cannot be locked from the inside. The Notice of Infraction alleged that the violation occurred on July 17, 2001 at “333 H Street.”¹ It sought a fine of \$500. Respondents filed a timely plea of Deny, and I held an evidentiary hearing on September 28, 2001. All parties appeared on that date. Nan Reiner, Esq. represented the Government and Harry Spikes, Esq. represented Respondents.

¹ The address listed in the Notice of Infraction did not specify the quadrant of the City where the violation allegedly occurred. There is no dispute, however, that Newcomb operates a child development facility at 333 H Street, N.E., which was the location of the events at issue in this case. Respondents have not asserted any prejudice due to the omission of “N.E.” from the address, and I find none.

Based upon the testimony of the witnesses, my evaluation of their credibility and the documents admitted into evidence, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Newcomb operates a child development facility at 333 H Street, N.E. Respondent Andrea Cannon is the president of Newcomb. On May 29, 1998, Newcomb completed a fire evacuation plan for the facility, and Ms. Cannon signed it. The Fire Chief approved the plan on June 11, 1998. Petitioner's Exhibits ("PX") 103-05. The plan provides that there are two exits from the building to be used in case of fire – one in the front and one in the back. PX 104. The plan also provides that, in the event of a fire, the staff should "assist and direct students in evacuating the building and then proceed directly to the assembly area located at 442 H Street, N.E." PX 103 at 1. The rear exit from the building leads to a small yard, approximately 20 feet by 20 feet. The yard is enclosed by a six-foot high fence or wall. The only means of exiting the yard is through a gate, which leads to a public alley behind the property. Thus, it is necessary to proceed through the gate to reach 442 H Street, N.E., the assembly point specified in the fire evacuation plan.

On July 17, 2001, Maureen Ryan, an inspector employed by the Department of Health, visited the facility. Her visit occurred during normal program hours, while children and staff were present. On July 17, the gate in the rear yard was secured with a padlock and chain. When she observed this, Ms. Ryan instructed the staff members on duty to unlock the gate. The staff members looked for a key that would open the lock, but were unable to find one after searching for between 30 and 45 minutes. Ms. Ryan then instructed the staff members to cut the chain so

that the gate would be open. Before the staff could make arrangements for the chain to be cut, most of the children had left for the day. Ms. Ryan then left the premises. She called the facility the next day and was informed that the gate was unlocked. She visited the facility again on August 1, 2001, and found the gate unlocked. A fire safety inspector from the Department of Consumer and Regulatory Affairs visited the facility on September 26, 2001 and also found the gate unlocked.

III. Conclusions of Law

The rule at issue provides:

In child development centers, all required exits shall be equipped with panic release hardware or with knob-type hardware that cannot lock from the inside. No other type of securing hardware may be used as supplemental to or in conjunction with this required type of hardware. Doors shall swing in the direction of egress.

29 DCMR 330.8.

Respondents do not dispute that the gate in the rear yard was locked on July 17, that it could not be opened from the inside, and that the use of a padlock and chain was not a “type of securing hardware” permitted by the rule. The only disputed issue is whether the gate was a “required exit[]” subject to § 330.8.

Section 330.8 itself does not define what a “required” exit is. Accordingly, egress through the gate must be legally “required” by some source other than § 330.8 for there to be a violation. The Government correctly argues that the gate is a “required” exit because Newcomb’s own fire evacuation plan requires that the gate be available for use. All child development facilities must have a fire exit plan approved by the Fire Chief. 29 DCMR 330.10.

To satisfy that requirement, Newcomb submitted a plan calling for use of the rear exit from the building as a means to proceed to 442 H Street, N.E. Anyone following that plan must proceed through the gate. Access through the gate, therefore, is necessary for compliance with the fire evacuation plan. Because Newcomb is legally required to have a fire evacuation plan, and because it chose to rely upon the gate as a necessary component of that plan, it follows that the gate is a “required exit[]” subject to § 330.8. Newcomb, therefore, violated § 330.8 on July 17, 2001 because it secured a required fire exit with hardware that locked from the inside.²

Newcomb argues that § 330.8 does not provide sufficient notice that the term “required exits” includes a gate located outside the building itself. Newcomb’s own fire evacuation plan, however, relies upon the gate to ensure that children and staff members can proceed safely to its chosen assembly point. Newcomb, therefore, cannot be heard to complain that its own plan did not inform it that the gate must not be locked from the inside.

A violation of 29 DCMR 330.8 is a Class 2 infraction, punishable by a \$500 fine for a first offense. 16 DCMR 3222.1 (u). Newcomb argues that it corrected the violation promptly, and the Government’s evidence showed that the gate was unlocked on subsequent occasions. While prompt correction of a violation can mitigate a fine in certain circumstances, the seriousness of the violation in this case outweighs Newcomb’s efforts at correction. The violation threatened serious harm to children and staff members who could become trapped in a very small yard in the event of a fire, and the staff members’ inability to find a key for at least

² Because the fire evacuation plan is sufficient to conclude that the gate is a “required” exit, I do not decide whether the evidence and the citations offered by the Government are sufficient to support the Government’s alternative theory, *i.e.*, that the District of Columbia Building Code also required the gate to be unlocked from the inside.

half an hour exacerbated the violation. Because the violation created a major safety hazard, I will impose the full \$500 fine for the violation.

I will impose the fine only upon Newcomb, however. Ms. Cannon signed the 1998 fire evacuation plan, but the Government presented no evidence that she was the director of the facility or that she had any involvement in the locking of the gate. Absent evidence of her personal involvement in the violation or some other basis for liability, *see, e.g.*, 29 DCMR 315.2 (c), there are no grounds for imposing personal liability upon her. The charge against her, therefore, will be dismissed. *DOH v. D.C. Family Services, Inc.*, OAH No. I-00-40138 at 6-7 (Final Order, October 22, 2001).

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondent Andrea Cannon is **NOT LIABLE** for violating 29 DCMR 330.8 and the charge against her is **DISMISSED**; and it is further

ORDERED, that Respondent Newcomb Child Development Center is **LIABLE** for violating 29 DCMR 330.8; and it is further

ORDERED, that Respondent Newcomb Child Development Center shall pay a total of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **1/8/02**

John P. Dean
Administrative Judge